(1)

# 95-479

Supreme Court, U.S.
FILED
SEP 18 1995
CLERK

No.____

---

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1995

---

David Crawford, Petitioner,

v.

State of California, Its Agency the
Franchise Tax Board (State Income Tax)
et al.

---

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

---

92 pp

## QUESTIONS PRESENTED

1. Whether a federal court order for Crawford to exhaust state remedies before filing a new case is binding on second District Court.

2. Whether respondents removing Hearing Officer's decision, to withdraw incompetence allegation against Crawford, from Officer's report without Officer's knowledge violates Crawford's right to predemotion hearing. Amend. 14. Violation of due process. Board of Regents v. Roth 408 U.S. 564 (1972).

3. Whether state Court of Appeal Los Angeles knowingly using removed evidence and altered evidence to write decision adverse to Crawford violates his 14th Amend. right to due process. Brady v. State of Maryland 373 U.S. 83 (1963).

4. Whether state Court of Appeal's Los Angeles denial that, "authorized signature on document is evidence approval" violates Crawford's 14th Amend. right to due process. U.S. Constitution (Art. I, sec. 7, cl. 2). "President's signature is sole evidenc of President's approval". Gardner v. Collector 73 U.S. 499, 506 (1867).

## LIST OF PARTIES

David Crawford, Petitioner

v.

State of California, Its Agency the Franchise Tax Board (State Income Tax) and its employees: Gerald Goldberg, Chief Executive Officer; Robert Bonnici, Compliance Executive Officer; James Stevens, Manager; John Akin, Tax Counsel; and Does one to ten; Respondents.

TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| Allen v. McCurry 449 U.S. 90 (1980) | 14 |
| Board of Regents v. Roth 408 U.S. 564 (1972) | 16, 18 |
| Brady v. State of Maryland 373 U.S. 83 (1963) | 25, 22 |
| Daubert v. Menell 113 S.Ct. 2786 2792 (1993) | 29 |
| Gardner v.The Collector 73 U.S. 499, 506 (1867) | 28 |
| Pulskamp v. Martinez 2 Cal App. 4th 854 (Jan 1992) | 28 |
| Ruffalo 390 U.S. 544,553 (1968) | 13, 17, 22 |
| Skelly v. State Personnel Board 15C, 3d 194, 206, 208 (1975) | 18 |
| Versluis v. Town of Haskell 154 F2d 935, 936 | 14, 20 |

| Statutes and Rules | |
|---|---|
| Calif. Code Civil Procedure §338(4) | 19 |
| Calif. Govt. Code §19575.5 | 22 |
| Calif. Govt. Code §19587 | 23 |
| Calif. Govt. Code §19818.8 | 7 |
| Calif. Rules of Court Rule 23(a) | 24 |
| Field Audit Supervisors' Manual ¶¶ 0750 and 1420 | 26 |
| The U.S. Constitution (Art. 1, sec. 7, cl. 2) | 28 |

| Cases | |
|---|---|
| Napue v. Illinois 360 U.S. 264 | 25 |
| Pyle v. Kansas 317 U.S. 213, 215-216 | 25 |

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTIONS PRESENTED | i |
| LIST OF PARTIES | ii |
| TABLE OF AUTHORITIES | iii |
| OPINIONS BELOW | 1 |
| JURISDICTION | 2 |
| STATUTORY PROVISION INVOLVED | 2 |
| STATEMENT OF FACTS | 3 |
| SUMMARY OF ARGUMENT | 11 |
| REASONS FOR GRANTING THE PETITION | 13 |
| I. A federal court order to exhaust state remedies and file a new case in District Court tolls statute of limitations, is binding on second District Court and contributes to equitable tolling. | 13 |
| II. That removing Hearing Officer's favorable decision, to withdraw incompetence allegation against Crawford. from the Officer's report without the Officer's knowledge violates Crawford's 14th Amendment right to procedural due process. | 16 |
| III. That state Court of Appeal at Los Angeles knowingly using removed evidence, altered evidence and new allegations to write decision adverse to Crawford violated Crawford's 14th Amendment right to due process. | 21 |

IV. That state Court of Appeal at Los Angeles refusing to apply most basic law that, "authorized signature on document is evidence of approval" violates Crawford's 14th Amendment right to due process. The U.S. Constitution (Art. I, sec. 7, cl. 2) 26

CONCLUSION 30

APPENDIX A 31

APPENDIX B 48

APPENDIX C 51

APPENDIX D 53

APPENDIX E 63

APPENDIX F 75

APPENDIX G 76

APPENDIX H 80

APPENDIX I 85

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1995

---

DAVID CRAWFORD, Petitioner

v.

STATE OF CALIFORNIA, ET AL, Respondents

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

David Crawford respectfully petitions for a writ of certiorari to review the judgment of the United Stated Court of Appeals for the Ninth Circuit in this case.

## OPINIONS BELOW

No opinion is published. The opinion of the Court of Appeals for the Ninth Circuit is Appendix A. The opinion of the District Court San Diego January 22, 1991 the Honorable Judge Earl B. Gilliam is Appendix B. The opinion of the District Court San Diego March 30, 1992 the Honorable Judge Judith N. Keep is Appendix

C. The opinion of the Court of Appeal of the State of California at Los Angeles March 6, 1991 is Appendix D. Crawford's Request for Rehearing to the Ninth Circuit April 25, 1994 is Appendix E. The judgment to affirm of the Ninth Circuit July 3, 1995 is Appendix F. Respondents answers to Federal Interrogatories is Appendix G. Crawford's Motion to Recall Mandate and Petition for Rehearing to the Ninth July 12, 1995 is Appendix H. The Ninth's Denial of Petition August 10, 1995 is Appendix I.

## JURISDICTION

The Court of Appeals for the Ninth Circuit entered its judgment on July 3, 1995. The jurisdiction of this Court is invoked under 28 USC §1254(1). The Court has nexus of Federal Judge the Honorable Earl B. Gilliam's order to go to that state court then refile in District Court.

## STATUTORY PROVISION INVOLVED

Due process clauses of the U.S. Con-

stitution 5th and 14th Amendments on removed evidence, altered evidence and new allegations.

The U.S. Constitution (Art. 1, sec. 7, cl. 2) on the authorized signature on a document means approval.

STATEMENT OF FACTS

The jurisdiction of the District Court was invoked under 28 USC §1331 and §1343(3) and 42 USC §1983.

The jurisdiction of the Court of Appeals for the Ninth Circuit was invoked under 28 USC §1291.

Chronological

On January 7, 1970 Crawford began employment with the California Franchise Tax Board (FTB) as an Auditor I. On February 1, 1971 Crawford was promoted to journeyman Auditor II after the standard one year probation period.

Crawford successfully performed duties as a Journeyman Tax Auditor II for 14 years.

Exhibit G is Respondent John Akin's admission and declaration that Akin removed evidence, renumbered evidence and imposed new

allegations for Crawford's February 27 and 28, 1984 evidentiary hearing.

Exhibit G is also an admission that FTB Chief Executive Officer Gerald Goldberg authorized Crawford's demotion and dismissal for incompetence despite the fact that all of Crawford's audits were supervisor signed approved at all times during the course of Crawford's employment with the FTB. (R. Tab 3 pg 2:27-3:11)

There were no pre or post deprivation remedies in state administrative hearings or state courts because Crawford was denied 14th Amendment due process and equal protection of law. The state process has itself been abused. (R. Tab 3 par. 14)

The state tribunal remedies for redressing the wrongs against Crawford have proven themselves inadequate to provide post deprivation relief for taking Crawford's property right to Crawford's employment and Crawford's liberty by means of wrongfully

discharging Crawford following inadequate and improper hearings, and deliberately basing decisions on 32 items of removed evidence, 300 pages of renumbered evidence and 100 renumbered charges and creating 30 new allegations and thereafter refusing to reinstate Crawford. (R. Tab 3 par. 15)

During Crawford's 15 years employment with the FTB Crawford consistently completed a greater number of audits than his peer group of auditors.

Crawford's first demotion for alleged incompetence was December 1991.

The Hearing Officer wrote a report to withdraw the allegation as there was no basis.

Respondents removed the Officer's decision paragraph from the Officer's report without the Officer's knowledge.

There is a thin paper line above the Officer's signature to indicate where the decision paragraph was blocked out.

In late 1989 Crawford learned of the

December 1981 altering the Hearing Officer's report. (See Reason II for Granting Petition)

August 23, 1982 Crawford was again demoted for incompetence. This demotion was based on 20 audits a six month period that were all supervisor signed approved.

November 4, 1982 the State Personnel Board (SPB) dismissed the August 23, 1982 demotion as again there was no basis for a cause of action.

January 17, 1983 respondents again demoted Crawford for incompetence for the same time period and the same 20 approved audits as was previously dismissed on November 4, 1982.

On February 27 and 28, 1984 the SPB held a hearing on the January 17, 1983 demotion. For this hearing respondent FTB attorney John Akin removed 32 items of evidence including some of Crawford's workpapers and then claimed that Crawford did not do the work. John Akin also renumbered the 100 allegations and im-

posed 30 new allegations not contained in the allegations of January 17, 1983. (Opening Brief. 6) See Reason III for Granting the Petition)

April 4, 1984 the SPB affirmed Crawford's demotion relying on removed evidence, altered evidence and new allegations. Crawford had written to the Administrative Law Judge about the spoiled evidence and was ignored.

July 12, 1984 the SPB granted Crawford a rehearing because of removed evidence, altered evidence and new allegations. (OB. 7)

July 16, 1984 respondents dismissed Crawford from an Auditor I position based on two supervisor signed approved Auditor II multinational apportionment audits.

Respondents violated Calif. Govt. Code §19255 (now 19818.8) which provides that an employee cannot be disciplined for alleged failure to do the work of a higher classification.

Crawford's dismissal is alleged on information and belief to be in retaliation against Crawford for exercising his right to seek relief from an adverse action in violation of Crawford's 14th Amendment right to due process. (OB. 8)

October and December 1984 the SPB did four days of hearings on Crawford's dismissal.

At hearing the Administrative Law Judge stated:

> "It is stipulated that Crawford completed 10 apportionment cases between January and July 1984" (OB. 8)

May 1985 the SPB affirmed Crawford's dismissal ignoring Crawford's precise issue of Govt. Code §19255 (now 19818.8) supra. in contravention of Crawford's right to due process. (OB. 9)

The SPB further denied Crawford due process by creating (non-existent) evidence that Crawford made mathematical errors when none were cited in four days of testimony.

February 1987 Superior Court denied Crawford a Writ of Mandate also ignoring Crawford's precise issue of Govt. Code §19255 and also stating (nonexistent) evidence of math errors when none were cited in testimony. (R. 17 pg 15)

June 1988 Calif. Court of Appeal Los Angeles denied Crawford a Writ of Mandate also ignoring Crawford's precise issue of Govt. Code §19255.

The Court of Appeal quoted and then refused to determine on Crawford's just learned issue of the FTB Field Audit Supervisors' Manual that when supervisor signs an audit approved it is complete to department standards, policy and procedurs. (See Reason IV for Granting the Petition)

That state Court of Appeal said that, "conflicting evidence exists regarding what in fact a supervisor's approval indicates."

That state Court of Appeal denied Crawford equal protection of law that a signature means approval. U.S. Constitution (Art. 1,

sec. 7, cl. 2. As to "conflicting evidence" there is none.

August 1988 Calif. Supreme Court refused to hear Crawford's case.

September 1989 the SPB held a rehearing on the demotion. (See Third Reason for Granting the Petition)

September 1991 Crawford filed a new case in District Court per Judge Gilliam's order. (See First Reason for Granting the Petition)

Crawford filed First Amended Complaint District Court November 21, 1991 to prove qualify for equitable tolling.

The second District Court, Judge Keep, dismissed Crawford's First Amended Complaint on March 30, 1992. Appendix C)

Judge Keep dismissed Crawford's Motion for Reconsideration on June 2, 1992.

Crawford's timely Opening Brief (OB) to the 9th Circuit is dated January 6, 1993.

The 9th's Adverse Memorandum Decision is dated April 13, 1994. (Appendix A)

## SUMMARY OF ARGUMENT

1. Both the second District Court and the 9th ignored that the first Federal Judge [Gilliam's] order to exhaust state remedies then file a new case in District Court tolls statute of limitations and allows for equitable tolling.

2. Both the second District Court and the 9th ignored that Crawford learned late in 1989 that a Hearing Officer's decision, to withdraw the incompetence allegation against Crawford, was removed from the Officer's report without the Officer's knowledge.

3. State Court of Appeal at Los Angeles knowingly used altered evidence, removed evidence and new allegations to make a decision against Crawford thus violating Crawford's 14th Amendment right to due process.

4. State Court of Appeal at Los Angeles refused Crawford equal protection of the most basic law that "authorized signature on a

document is evidence of approval." (U.S. Constitution Art. 1, sec. 7, cl. 2) A year later (1992) in another case the State Court of Appeal Los Angeles gave the opposite and correct decision to enforce signatures.

U.S. Supreme Court has nexus to State Court of Appeal because Federal Judge Gilliam ordered Crawford to go to that state Court.

For all four issues public policy is reason to grant certiorari.

Respondents did not raise a statute of limitations defense until after Crawford filed First Amended Complaint November 20, 1991 complying with Judge Gilliam's order to file a new case. If there was any prejudice to respondents they waived that prejudice by failing to raise the issue of expiring statute of limitations until after Crawford complied with Judge Gilliam's order to file a new case. (R. Tab 3 pg 1B)

## REASONS FOR GRANTING THE PETITION

The state court decisions knowingly based on removed evidence, altered evidence, new allegations and denying Crawford equal protection of the law on documents with authorized signatures so infected the federal proceedings that justice requires reversal of the federal determination. (Similar to Ruffalo 390 U.S. 544, 553 (1968).

### I. A federal court order to exhaust state remedies and file a new case in District Court tolls statute of limitations, is binding on second District Court and contributes to equitable tolling.

On January 8, 1991, the day before jury selection, the first federal judge [Gilliam] dismissed Crawford's violation of due process complaint without prejudice and ordered Crawford to go to state Court of Appeal and then may refile a new case in District Court.

Crawford learned in time to appeal that Judge Gilliam should have retained jurisdiction instead of ordering Crawford to file a

new case. Allen v. McCurry 449 U.S. 90 (1980) provides:

> "Where Plaintiff properly invokes federal court jurisdiction in the first instance on a federal claim, the federal court has a duty to accept jurisdiction and abstention and remission to a state court for a related decision of state law may serve only to postpone, rather than to abdicate..." (R Tab 17 pages 11:23-12:2) (OB. 19)

Because Judge Gilliam's order to refile was a tolling instrument and affection Crawford chose to comply with Judge Gilliam's order and not appeal.

Versluis v. Town of Haskell 154 F2d 935, 936 (10CA 1941) provides:

> "Whenever some paramount authority, (Judge Gilliam in this case) prevents a person from exercising his legal remedy, the time during which

he is thus prevented is not to be counted against him in determining whether the statute of limitations has barred his right." (OB. 25)

December 1990 Crawford offered to settle for beginning employment. John Akin offered to change Crawford's dismissal to resignation. A jury trial was scheduled in a month thus Crawford believed settling for only beginning employment was low enough.

May 1994 Crawford offered to settle for changing dismissal to resignation. John Akin said no.

Crawford's Request for Rehearing (Exhibit E pages 70, 71, 72 and Judge Gilliam's order (Exhibit B pages 48-49 ) disclose that Judge Gilliam's order contributes to equitable tolling:

1. Respondents are the same from the beginning in 1981. Respondents were informed of every item of litigation as it occurred.

2. Judge Gilliam in his order stated that the same issues, evidence and violations of due process are in both state and federal courts. (Appendix B pages 48, 48)

3. Crawford has been diligent. Crawford complied with Judge Gilliam's order to go to state Court of Appeal then refile in District Court. Crawford has been in litigation since the 1981 beginning.

The second District Court and the 9th both declined to apply Judge Gilliam's order to Crawford.

Public Policy is good reason to grant certiorari; to clarify the authority to apply to a federal judge's order.

**II. That removing Hearing Officer's favorable decision, to withdraw incompetence allegation against Crawford, from the Officer's report without the Officer's knowledge violates Crawford's 14th Amendment right to procedural due process.**

Board of Regents v. Roth 408 U.S. 564 (1972) provides:

"Where a person's good name, rep-

utation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." (R. Tab 3 par. 40)

The initial deprivation of Crawford's 14th Amendment rights to due process and equal protection of law was in December 1981 when Crawford was demoted for his Tax Auditor II position, following a predemotion hearing for which Crawford was not given a clear, concise statement of any wrongful acts or omissions as required by Calif. Govt. Code §19574 (R. Tab 3 par. 31) and Ruffalo 390 U.S. 544 (1968).

Ruffalo provides:

"Absence of fair notice as to reach of grievance procedure and precise nature of changes deprived attorney (Ruffalo) of procedural due process even though he was thereafter given several months to respond to that charge..."

The Hearing Officer, in Crawford's case, after considering all relevant evidence relating to the allegations of incompetence and inefficiency recommended that the allegations be dismissed. (R. Tab 3 par. 31)

In contravention of the Hearing Officer's decision, respondents removed the Officer's report without the Officer's knowledge.

The Hearing Officer's signature was then moved up on the page to cover up the intentional removal of the Officer's decision to withdraw the adverse action against Crawford. (R. Tab 3 par. 36)

Respondents took Crawford's 14th Amendment due process rights to a predemotion hearing before an impartial official as mandated by Skelly v. State Personnel Board 15C, 3d 194, 206, 208 (1975) Board of Regents v. Roth 408 U.S. 564 (1972) supra

Crawford first learned of removal of

the Hearing Officer's decision in late 1989 and that is when statute of limitations commenced to run. Calif. Code Civil Procedure (CCP) §338(4) provides:

> "The cause of the action in that case is not to be deemed to have accrued until the discovery, by the aggrieved party of the facts constituting the fraud or mistake."

Crawford quickly filed Amended Complaint On Nowember 27, 1989 on the Hearing Officer issue.

Crawford filed an Opposition to Motion to Dismiss Amended Complaint including the Hearing Officer issue on March 2, 1990. (Exhibit E pages

The second District Court and the 9th claim Crawford was not timely filed though Crawford provided pages of timely filings discussing altering Hearing Officer's report.

A jury trial was set for January 8, 1991.

The day before jury Federal Judge Gilliam ordered Crawford to exhaust state remedies and then file a new District Court case. Judge Gilliam's order is a tolling instrument. (OB. 24) Versluis v. Town of Haskell 154 F2d 935, 936 (10CA 1941) supra

Crawford timely filed a new case September 30, 1991 as Judge Gilliam ordered and an Amended Complaint on November 20, 1991 to prove equitable tolling. (R. Tab 3 pages 1A, 1B, 1C) Both complaints include updated causes of action for altering Hearing Officerer's favorable report.

Thus Crawford's complaint altering Hearing Officer's favorable report is timely filed.

Crawford again detailed timely filing in Request for Rehearing to the 9th on April 25, 1994. (Appendix E pages 63, 64, 65)

The 9th found against Crawford without explanation. (Appendix F page 75.

Altering a Hearing Officer's report be-

sides violating due process also violates Public Policy. It deprives a citizen of 14th Amendment due process right to a hearing to respond to allegations against him or her. Public Policy is a good reason to grant certiorari.

III. **That state Court of Appeal at Los Angeles knowingly using removed evidence, altered evidence and new allegations to write decision adverse to Crawford violated Crawford's 14th Amendment right to due process.**

Appendix G is respondent John Akin's admission and declaration that Akin removed evidence, altered evidence and made new allegations for a February 1984 judicial hearing.

On February 27 and 28, 1984 the State Personnel Board (SPB) held a hearing on Crawford's January 17, 1983 demotion. For this hearing John Akin removed 32 items of evidence including some of Crawford's workpapers and then charged that Crawford did not do the work. John Akin also renumbered

the 300 pages of evidence and renumbered the 100 allegations and imposed 30 new allegations not contained in the allegations of January 17, 1983.

No notice was given to Crawford prior to the hearing date of the altered evidence removed evidence and new allegations as required by Calif. Govt. Code §19575.5 and Ruffalo 390 U.S. 544 (1968) supra

Removing evidence and altering evidence violates 14th Amendment due process. Brady V. State of Maryland 373 U.S. 83 (1963)

Making new allegations without any notice to Crawford also deprived Crawford of 14th Amendment due process. Ruffalo supra

April 4, 1984 the SPB affirmed Crawford's demotion relying on removed evidence, altered evidence and new allegations.

Crawford had written to the Administrative Law Judge about the spoiled evidence and was ignored.

July 12, 1984 the SPB granted Crawford

a rehearing because of removed evidence, altered evidence and new allegations.

July 24, 1984 the SPB rescinded granting the rehearing in violation of Govt. Code §19587 which provides that:

> "Once a rehearing is granted a carrying out of the process is mandated."

September 1989 the SPB finally held the rehearing on Crawford's demotion that had been rescinded five years earlier on July 24, 1984.

The SPB readopted its April 14, 1984 decision knowing that it was based on removed evidence, altered evidence and new allegations against Crawford.

January 1990 Superior Court at Los Angeles denied Crawford a Writ of Mandate also using the removed evidence, altered evidence and new allegations.

March 1991 Calif. Court of Appeal at Los Angeles provided an adverse decision

also ignoring all of Crawford's precise issues and knowingly using altered evidence removed evidence and new allegations against Crawford.

Appendix D page 62 is the state Court of Appeal's admission and declaration that Akin removed evidence, altered evidence and made new charges for the February 1984 judicial hearing.

That state Court of Appeal denied Crawford's Request for Findings as mandated by Calif. Rules of Court Rule 23(a).

The public conscience rebels against court decisions based on spoiled evidence.

A U.S.Supreme Court case reversing decisions based on removed evidence, altered evidence and new allegations will guide the courts below.

Public Policy is reason here for certiorari. Supreme Court has nexus here because federal Judge Gilliam ordered Crawford to this state Court of Appeal. (Appendix B.

Intentional spoliation of evidence occuring during a trial is a wrong against the public under Calif. Penal Code §135. (B.E. Witkin, Introduction of Evidence at Trial §1777) Tab 9 page 16:12-15)

Crawford requests the Court to take judicial notice of Brady v. State of Maryland 373 U.S. 83, 104 (87?) which provides:

Citing Pyle v. Kansas 317 U.S. 213, 215-216 "...suppression of evidence favorable" to the accused was itself sufficient to amount to a denial of due process.

Crawford requests the Court to take judicial notice of Napue v. Illinois 360 U.S. 264 which provides: "A conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the due process clause of the Fourteenth Amendment; the same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears.

**IV. That state court of appeal at Los Angeles refusing to apply most basic law that, "authorized signature on document is evidence of approval" violates Crawford's 14th Amendment right to due process. U.S. Constitution Art. I, sec. 7, cl.2**

Crawford was a 15 year Franchise Tax Board (FTB) auditor/employee with a property interest in his employment under the due process and equal protection of law clauses of the 14th Amendment. Crawford had an objectively verifiable reasonable expectation of continued employment. (Opening Brief. 4)

Crawford successfully performed duties as a journeyman Tax Auditor II for fourteen years.

During Crawford's tenure of employment all of Crawford's audits were completed with minimal supervision and ultimately signed approved with no exceptions noted by Crawford's supervisors in accordance with the FTB Field Audit Supervisors' Manual. (OB. 5)

The FTB Field Audit Supervisors' Manual paragraphs 0750 and 1420 respectively provide that:

"When the audit supervisor approves

the case the supervisor is stating the departmental audit procedures, standards and policy have been adhered to."

"Since the auditor's ability to successfully complete a case requires the supervisor's review and approval, no case can be completed until the audit supervisor signs off on the case."

(Opening Brief. 5)

Every state tribunal refused to apply this law of signatures and this state manual to Crawford. A complete denial of due process.

It is an unequal protection of law that other state employees were guided and protected by this manual but not Crawford.

The state courts deprived Crawford of federal right to due process by ignoring the Audit Supervisors' Manual ¶¶ 0750 and 1420.

Respondents knew that all of Crawford's audits were supervisor signed approved and thus there was never any basis for demoting and dismissing Crawford on allegations of incompetence and inefficency. (OB. 5)

The same state Court of Appeal at Los Angeles that heard Crawford's case in 1991 heard a similar case in 1992 brought by former Los Angeles Mayor Tom Bradley.

In Mayor Bradley's case the Court of Appeal gave the opposite and correct decision to uphold the Constitution that signature means approval.

The Bradley case is Pulskamp v. Martinez 2 Cal. App. 4th 854 (Jan 1992).

The U.S. Constitution (Art. 1, sec.7, cl. 2) provides:

> "If the President approves a bill he shall sign it..."

Gardner v. The Collector 73 U.S. 499, 506 (1867) provides:

> "Presidents signature is sole evidence of President's approval."

Both the U.S. Constitution and Gardner were used by Superior Court at Los Angeles to uphold the Mayor Bradley decision that authorized signature means approval.

Crawford requests the Court to take judicial notice of U.S. Constitution (Art. 1, sec. 7, cl. 2) and Gardner.

January 1990 Superior Court Los Angeles stated if Crawford could cite a case on signatures the court would consider it. Crawford knew no case to cite.

Signature approval is a constitutional question as described above.

Authorized signature approval is Public Policy.

The Court may grant certiorari if a case involves a significant issue of Public Policy. Daubert v. Menell 113 S.CT. 2786, 2792 (1993).

A U.S. Supreme Court case that a signature means approval will guide the courts below.

## CONCLUSION

The judgment appealed from should be reversed and the cause remanded to the District Court of Southern District of California for further proceedings.

Respectfully submitted,

David Crawford
520 East Maple St., No. 2
Glendale, CA 91205-2355
(818) 241-9745

Petitioner Pro Se

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED April 13, 1994

DAVID CRAWFORD,

Plaintiff-Appellant,

v.

GERALD GOLDBERG, ROBERT BONNICI, JOHN AKIN, JAMES STEVENS,

Defendants-Appellees.

No. 92-55889

D.C. No. CV-91 1357-JNK

MEMORANDUM*

Appeal from the United States District Court for the Southern District of California

Judith N. Keep, Chief District Judge, Presiding

Submitted April 5, 1994**

Before: POOLE, BEEZER, AND T.G. NELSON, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4

Exhibit A
Page 31

David Crawford, appeals pro se the district court's order granting the defendants' motion to dismiss in his 42 U.S.C. §1983 action. Additionally, Crawford contends that the district court erred in denying him leave fo file an amended complaint and that the district court erred in dismissing rather than staying an earlier civil rights action. We have jurisdiction under 28 U.S.C. §1291, and we affirm.

I. Dismissal of Prior Civil Rights Action

We are required to raise issues concerning our jurisdiction sua sponte. McGuckin v. Smith, 974 F.2d 1050, 1052 (9th Cir. 1992). A notice of appeal must be filed within thirty days of the date of entry of the judgment or order appealed from. Fed. R. App. P. 4(a)(1). The procedures set forth in Rule 4 are strictly construed with no exceptions for pro se litigants. See Malone v. Avenenti 850 F2d 569, 572 (9th Cir. 1988).

Prior to commencing this federal action, Crawford had attempted to file another federal action raising similar claims. On June 14, 1989, Crawford filed his first federal civil rights action with the district court (Case No. 89-0883-G(M)). On January 8, 1991 the district court dismissed these claims without prejudice and ordered Crawford to exhaust state remedies before filing a new federal action. Crawford now contends that the district court erred in dismissing this first action because the district court had a duty to retain jurisdiction. Crawford did not appeal the dismissal of this first action.

A dismissal of claims without prejudice is deemed final for purposes of appeal unless the court intends to permit amendment of the complaint in the same action. Mcguckin, 974 at 1052-53. Here the district court indicated that it intended to end the litigation so that Crawford could pur-

sue his state remedies. See id. Crawford did not file a notice of appeal from the dismissal of the claims in his first federal action. See Fed. R. App. P 4(a)(1). Accordingly we lack jurisdiction to consider the dismissal of Crawford's first federal action. See id

II. Statute of Limitations

Crawford contends that the district court erred in granting the defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6).[1/]

---

1/ The procedural posture of this case is somewhat ambiguous because the district court relied on matters outside the pleading. Generally, if the district court considers matters outside the pleading in ruling on a motion to dismiss, the motion is converted into a motion for summary judgment pursuant to Fed. R. Civ. P. 56. Fed. R. Civ. P 12(b); Emrich v. Touche Ross @ Co.,846 F. 2d 1190, 1198 (CA9 1988); Mack v. South Bay Beer Distrib., Inc., 728 F2. 1279,1282 (CA( 1986). However thedistrict court may take judicial notice of matters of public record without converting a Rule 12(b)(6) moyion into one of summary judgment. See, e.g.,Barron v. Reich, 13 F.3d 1370, 1377 (CA9 1994)

(judicial notice of Department of Labor Field Preperations Handbook); Emrich, 846 G.2d sy 1282 (judicial notice of records and reports of administrative bodies).

Here, the defendants filed a request for the district court to take judicial notice of the proceedings before the California State Personnel Board. the California courts, and the federal district court in the first action. Since these proceedings are all matters of public record, the district court could consider these documents without converting the motion to dismiss to one for summary judgment. See Mack, 798 F2d. at 1282. Accordingly, we treat the district court's decision as a dismissal for failure to state a claim under Rule 12 (b)(6) snd limit our inquiry to the content of the the complaint and the matters of public record. See Emrich, 846 F.2d at 1198.

Specifically, Crawford argues that the court erred in holding that the statute of limitations barred three of his claims. This contention lacks merit.

We review de novo the district court's dismissal of a complaint on statute of limitations grounds. Donoghue v. Orange County, 848 F.2d 926, 929 (CA9 1987). "When a motion to dismiss is based on the running of the statute of limitations, it can be granted only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled." Cervantes v. City of San Diego, 5 F.3d 1273, 1275 (CA9 1993). In California, §1983 claims are subject to the one-year limitations period for personal injury actions. Id. at 1275; Cal. Code Civ. Proc. §340(3) (West 1994). Although state law prescribes the statute of limitations applicable to §1983 claims, federal law governs the time of accrual.

Gibson v. United States,781 F.2d 1334, 1340 (CA9 1986, Cert. denied, 479 U.S. 1054 (1987). Thus, for §1983 claims, a cause of action accrues and the statute of limitations begins to run when a party knows or has reason to know of the injury which is the basis for the action. Vaughan v. Grijalva, 927 F.2d 476, 480 (CA9 1991)

As with the limitations period itself, state tolling doctrines apply to the extent that they are consintent with federal policy. Cervantes, F.3d at 1275; Donohue,848 F.2d at 930. The statute of limitations is tolled under the California doctrine of equitable tolling[2/] if the plaintiff pursues his remedy in another forum and the actions satisfy three factors:

2/ In his reply brief, Crawford contends that he has not requested equitable tolling. Nonetheless, Crawford relies on Donoghue to support his contention

that the statute should be tolled. Thus, it appears that Crawford is raising an equitable tolling claim because Donoghue concerns the California doctrine of equitable tolling. See Donoghue, 848 F.2d at 930-31.

Moreover, the California statutes that Crawford relies on to support his tolling claim are inapplicable to this action. California Code of Civil Procedure §338(4) states the time for accrual of a cause of action, but the accrual of a cause of action is determined by federal law. See Gibson, 781 F.2d at 1340. Californis Code of Civil Procedure §356 tolls the limitations period when the action is stayed by an injunction or statutory prohibition. Here, Crawford contends that this statute should apply to the exhaustion of administrative remedies is neither an injunction nor a statutory prohibition. Accordingly, Crawford's only possible remedy is the California doctrine of equitable tolling.

(1) timely notice to the defendants in filing the first claim; (2) lack of prejudice to the defendants in gathering evidence for the second claim; and (3) good faith and reasonable conduct in filing the second claim. Cervantes, F.3d at 1275.

Application of this three-part test is mandatory prior to dismissal of an action under Fed. R. Civ. P. 12 (b)(6). ID. at 1275-76. The issue of equitable tolling is fact-intensive and generally more appropriately applied at the summary judgment or trial stages of litigation rather than the pleading stage. ID. at 1276. However, the district court may grant a motion to dismiss if it is clear from the face of the complaint and the judicially noticed documents that the plaintiff cannot prevail as a matter of law on the equitable tolling issue. ID.; Emrich v. Touche Ross @ Co., 846 F.2d 1190, 1198 (CA9 1988); see Del Percio v. Thornsley, 877 F.2d 785, 786 n.1 (CA9 1989) (defendants in second claim en-

tirely unrelated to parties in first claim); Ervin v. County of Los Angeles, 848 F.2d 1018, 1020 (CA9 1988) (year and a half wait to file second claim unreasonable and not in good faith), cert. denied, 489 U.S. 1014 (1989).

A. Alteration of Hearing Officer's Decision (1981)

In his second cause of action, Crawford alleges that the defendants removed a hearing officer's recommendation to withdraw charges of incompetence against Crawford, leading to Crawford's first demotion in 1981. Thus, the cause of action accrued in December 1981 with Crawford's demotion which formed the basis for this claim. See Vaughan, 927 F.2d at 480.[3/]

3/ In his motion for reconsideration of the dismissal, Crawford alleged for the first time that he discovered the alteration of the hearing officer's decision in the fall oo 1989. Crawford failed to raise this claim in his original complaint, his amended complaint, his opposition to the motion to dis-

miss, or at the hearing on the motion to dismiss, even though the defendants had asserted a statute of limitations defense. Crawford has not offered any explanation for failing to provide this information earlier. See Hinton v. Pacific Enter., 5 F.3d 391, 395 (CA9 1993) (burden of alleging facts which give rise to tolling falls upon the plaintiff), petition for cert. filed, ___ U.S.L.W. ___ (U.S. Jan. 25, 1994) (No. 93-1481. Accordingly the district court din not err in failing to consider this new allegation, which Crawford raised for the first time in his motion for reconsideration and offered no excuse for his failure to present them in opposition to motion to dismiss).

Since Crawford filed this action in 1991, Crawford is barred by the statute of limitations unless equitable tolling applies. See Cervantes, 5 F.3d at 1275. Crawford's claim concerning the hearing officer's decision is not subject to equitable tolling because this claim is separate and distinct from the claims he raised in either his administrative or state proceedings. See Del Percio, 877 F.2d at 786 n.1. Accordingly, the district court properly dismissed this claim as barred by the statute of limitations. See id.

B. Second Demotion and Dismissal (1984)

In his third cause of action, Crawford alleges that the defendants altered and removed evidence at the February 1984 hearing on Crawford's second demotion. In his fourth cause of action, Crawford alleges that the defendants ignored relevant evidence when they dismissed him in July 1984.

Both the second demotion and the dismissal occured in 1984 and Crawford filed

this action in 1991. Crawford is barred by the statute of limitations unless equitable tolling applies. See Cervantes 5 F.3d at 1275; Vaughan, 927 F.2d at 480.

The equitable tolling doctrine is not available to Crawford in connection with his third and fourth causes of action because the named defendants in this action could not possibly have received notice of Crawford's earlier proceedings. In both the administrative and state proceedings, Crawford challenged his demotion and dismissal before the California State Personnel Board (SPB). In contrast, in the present action Crawford has named four employees of the Franchise Tax Board (FTB) as defendant. Crawford cannot provide effective notice to the employees of one state agency by naming another state agency in his earlier proceedings See Del Percio, 877 F.2d at 786 n.1 (equitable tolling not available as a

matter of law because plaintiff's adminis=trative proceedings against the California Commission on Teacher Preparation and Licensing did not provide notice to the officials of a local school district in a later federal action). Accordingly, the district court properly dismissed these claims as barred by the statute of limitations. See id.[4/]

III. Leave to Amend

Crawford contends that the district court erred in denying him leave to file a second amended complaint after the dismissal of his first amended complaint. This contention lacks merit.

We review the denial of leave to amend after a responsive pleading has been filed for abuse of discretion. Texaco, Inc,

4/ We need not address Crawford's additional tolling argument concerning his first federal action because the statute of limitations expired before Crawford filed that action in 1989. In addition, we need not address Crawford's arguments concerning collateral estoppel since all three causes of action are barred by the statute of limitations.

v. Ponsoldt, 939 F.2d 794, 798 (CA9 1991). The policy favoring leave to amend should be liberally construed when applied to a pro se plaintiff's complaint. See Fed. R. Civ. P. 15(a); Ferris v. Santa Clara County, 891 F.2d 715, 719 (9th Cir. 1989), cert, denied, 498 U.S. 850 (1990). "Whether leave to amend should be granted is generally determined by considering rhe following factors: (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party/" Texaco, Inc., 939 F.2d at 798; see also Hinton v. Pacific Enterprises, 5 F.3d 391, 395 (A9 1993) (applying factors to motion for leave to amend after dismissal on statute of limitations grounds), petition for cert. filed, ___U.S.L.W.___ (U.S. Jan. 25, 1994) (No. 93-1481).

Here, the district court denied Crawford's motion for leave to file a second amended complaint after the dismissal of the first amended complaint. The court held

that Crawford's second amended complaint contained substantially the same allegations as his first amended complaint.

In addition, the court noted that Crawford's same lawsuit had been pending since the early 1980's. Thus, the district court apparently found that the first, second and third factors weighed against granting leave to amend. See Texaco, Inc. 939 F.2d at 798. Even under a liberal construction of Crawford's motion for leave to amend. See id. at 798-799.[5/]

AFFIRMED.

---

5/ In his motion for reconsideration and leave to amend, Crawford alleged that he first learned of the hearing officer's decision to withdraw the incompetence charge in 1989. Crawford states that this allegation is "a new fact and new law that were (sic) not provided at this Court's first hearing." Crawford contends that the statute of limitations did not commence until

//

//

//

1989 when he discovered that this hearing officer's decision was removed from the report.

When a plaintiff fails to show that he or she was unable to discover the proposed amended material before filing a motion to amend, the district court may deny leave to amend upon this basis alone. Hinton, 5 F.3d at 895-96. Here Crawford has failed to show that he could not discover his proposed amendment before seeking leave to amend. On the contrary, Crawford knew of this fact in 1989 but he failed to raise it until he filed his motion for reconsideration and leave to amend. Therefore, the district court did not abuse its discretion in denying leave to amend, despite thei "new" allegation.

See id.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FILED JANUARY 22, 1991

| | |
|---|---|
| DAVID CRAWFORD<br><br>Plaintiff,<br><br>v.<br><br>STATE OF CALIFORNIA, ITS AGENCIES, THE FRANCHISE TAX BOARD, AND THE STATE PERSONNEL BOARD,<br>Defendants. | Civil No. 89-0883 -G(M)<br><br>MEMORANDUM DECISION<br><br>AND ORDER |

Due Process Claim. Crawford has filed several actions attacking his demotion and dismissal at both the state administrative and judicial levels. The state actions involve the same set of facts and circumstances that are the subject of this federal action. The state actions request the same relief that Crawford is pursuing in this action. In his state administrative and court proceedings, Crawford has raised the issue of denial of due process because of allegedly removed and altered evidence in

Exhibit B
Page 48

prior hearings. Currently, Crawford's appeal of his demotion is pending before the California Court of Appeal. Because the due process claim has been raised in that appeal, this court declines to exercise its jurisdiction over the due process issue at this time.

In assessing the appropriateness of dismissal in the event of an exercise of concurrent jurisdiction, a federal court may consider the amount of activity in the district court involving the same state court issuea; the effect of the state court judgment on the federal case; the convenience of the parties; the interests of judicial administration and comprehensive disposition of litigation, and the desirability of avoiding piecemeal litigation. Colorado River Water Conser. Dist.v. U.S., 424 U.S. 800, 96 S. Ct. 1236 (1976).

Having considered these factors, the Court has determined that dismissal without prejudice of the due process claim is appropriate in this case.

Crawford's claim of denial of due process is dismissed without prejudice and may be renewed after Crawford has exhausted his state remedies.

IT IS SO ORDERED.

Dated: January 16, 1991.

signature
Earl B. Gilliam, Judge
United States District Court

Exhibit B
Page 50

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ENTERED MARCH 25, 1992 FILED MARCH 30, 1992

| | | |
|---|---|---|
| DAVID CRAWFORD,<br><br>Plaintiff,<br><br>v.<br><br>GERALD GOLDBERG, ROBERT BONNICI, JOHN AKIN, JAMES STEVENS, and DOES 1 through 50,<br>Defendants. | ) | Case 91-1357-K(M)<br><br><br>ORDER DISMISSING<br><br>COMPLAINT WITH<br><br>PREJUDICE |

This matter came before the Court on March 2, 1992, on defendants' Motion to Dismiss plaintiff's First Amended Complaint pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6). The Court, having considered the documents submitted by the parties, the parties oral statements, and all other relevant matters, does hereby find, order, adjudge and decree as follows:

The court incorporates herein by reference its oral rulings. Plaintiff's first

Exhibit C
Page 51

claim for relief of the First Amended Complaint is dismissed, with prejudice, pursuant to the stipulation of the parties. Defendants' Motion to Dismiss is granted as to the remainder of the First Amended Complaint, including plaintiff's second, third and fourth claims for relief. The Court finds that plaintiff's second, third and fourth claims for relief are barred by the statute of limitations, and the third and fourth claims are also barred by collateral estoppel. The court finds there are no facts that can be alleged by plaintiff to overcome these issues. The entire First Amended Complaint is therefore dismissed with prejudice.

DATED: 3-18-92

Judith N. Keep
JUDGE OF THE UNITED
STATES DISTRICT COURT

Exhibit C
Page 52

NOT TO BE PUBLISHED

IN COURT OF APPEAL OF STATE OF CALIFORNIA

SECOND APPELLATRE DISTRICT

DIVISION THREE

| | | |
|---|---|---|
| DAVID CRAWFORD, | ) | |
| | ) | 2d Civil No. B049205 |
| Plaintiff and Appellant, | ) | (Super. Ct. No. c519191) |
| v. | ) | |
| CALIFORNIA STATE PERSONNEL BOARD, | ) | Filed March 6, 1991 |
| Defendant and Respondant. | ) | |

APPEAL from a judgment of the Superior Court of Los Angeles County. Kurt J. Lewin, Judge. Affirmed.

---

David Crawford, in pro. per., for Plaintiff and Appellant.

Daniel E. Lungren and John K. Van de Kamp, Attorneys General, N. Eugene Hill, Assistant Attorney General, Henry G. Ullerich, Supervising Deputy Attorney General, and Christopher C. Foley, Deputy Attorney General,

for Defendant and Respondent.

---

Plaintiff and appellant David Crawford (Crawford) appeals a judgment denying a petition for writ of mandate which sought review of a decision of the State Personnel Board (the Board). Because substantial evidence supports the findings of the Board, the judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Crawford began work at the Franchise Tax Board (FTB) on January 7, 1970, as an Auditor I and became an Auditor II on February 1, 1971. Effective January 17, 1983, the FTB demoted Crawford to auditor I based upon alleged inefficient and unproductive work performed by Crawford while he was assigned to the Political Reform Audit Division (PRAD) which audits "reports and statements filed by political entities, candidates, lobbyists, and committees."

Crawford appealed the demotion to the

Board which conducted a hearing. The testimony received by the Board included that of James Stevens (Stevens), an audit section district manager who had been a PRAD manager in 1982. Stevens testified Crawford's productivity was "low" and Crawford's performance as an auditor II had been "unsatisfactory."

Kent Bailey (Bailey), a 20 year FTB employee who specialized in quality review of audits, testified he had reviewed approximately 90 percent of Crawford's PRAD work and found it was not of auditor II level and that Crawford committed more errors than other auditors whose work Bailey reviewed.

Norman Ng (Ng), a tax auditor III, teatified he had reviewed numerous cases Crawford had handled. In one case, Ng found Crawford inconsistently has analyzed record keeping activity and had failed to state the audit step used to find an error.

In another case, Crawford had erroneously identified the type of committee under audit and had failed to carry forward a $400 expenditure. In a third case, Crawford erroneously recorded a deposit in transit as an exception and, in a fourth case, failed to describe the records kept by a political committee, failed to itemize contributions over$100 and erroneously described a regular contribution as a late contribution. In a fifth case, Crawford misdescribed an audit of the parent union as an audit of the political action committee, and, in a sixth case, failed to describe the steps taken to verify contributions, and misdescribed his actions in violation of the audit manual.

Ng conducted monthly interim evaluations of Crawford in February, March, April, May and June of 1982 concerning the quality, quantity and technical competence of Crawford's work.

In Crawford's defense, Joan Gilden

(Gilden), an auditor III in 1982, testified Crawford's work was average when compared with other auditorIIs. Gilden believed "[q]uite a few" of the errors alleged against Crawford were common errors committed by all auditors.

The Board upheld without modification Crawford's demotion to auditor I in a written decision filed February (should be September) 20, 1989.

On October 13, 1989, Crawford filed the instant petition for peremptory writ of mandate. The trial court, in a statement of decision filed March 9, 1990, found the Board properly had determined that incompetency and inefficiency had been established within the meaning of Government Code section 19572, subdivisions (b) and (c). The trial court also found substantial evidence supported the findings of the Board.

This appeal followed.

## CONTENTIONS

Crawford contends the trial court's statement of decision does not address the controverted issues. He claims those issues are (1) the fact that Bailey and Ng based their testimony on evidence that had been altered; and (2) the fact that Crawford's supervisors had approved all of his audits.

## DISCUSSION

1. Standard of Review.

On appeal, this court views the evidence before the Board in the light most favorable to the Board's findings. (Flowers v. State Personnel Bd. (1985) 174 Cal. App. 3d 753, 758; Pereyda v. State Personnel Board (1971) 15 Cal. App. 3d 47, 50.) The decision of the Board must be upheld if supported by substantial evidence. (Thompson v. State Personnel Bd.(1988) 201 Cal. App. 3d 423, 427; Washington v. State Personnel Bd. (1981) 127 Cal. App. 3d 636, 640.)

2. The trial court's statement of decision adequately addressed the issues presented.

Before the trial court, Crawford argued the fact that his supervisors had approved his audits through three levels of supervision evidenced his competence. He stated that "when the supervisor signs off on an audit....it's complete to department standards, policies and procedures. The State Personnel Board .... totally ignored that."

Crawford also argued the repagination of the audits used as cases in evidence before the Board to demonstrate his incompetence caused him prejudice because his notes referred to the original numbering.

On this point the trial court stated the Board "read the substance of the documents and reach[ed] their conclusions on the merits, not on the page numbers." Crawford conceded that had he been notified

of the renumbering prior to the hearing, he would not have objected.

Notwithstanding Crawford's claim the trial court's statement of decision did not address these issues, it stated: "The record of the State Personnel Board hearing does not contain evidence that the signatures by petitioner's supervisors on his audits render those audits not usable as evidence of incompetency and inefficiency."

Further, the statement of decision indicated the record of the Board hearing "does not contain evidence that either petitioner [Crawford] or his attorney objected to the repagination or other marking of exhibits.....[¶]...[or] that repagination or other marking of exhibits used at the hearing prejudiced petitioner in any fashion."

Thus, both of Crawford's assignments of error are refuted by the trial court's

statement of decision.

CONCLUSION

The record of the proceedings before the Board abundantly supported its finding that Crawford properly had been demoted.

DISPOSITION

The judgment is affirmed. Each party to bear respective costs on appeal.

NOT TO BE PUBLISHED

KLEIN, P.J.

We concur:

DANIELSON, J.

CROSKEY, J.

ROBERT N. WILSON, Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the preceding is a true and correct copy of the original of this document on file in this Court, as shown by the records of my office.

Witness my hand and the seal of this Court.

Dated: July 17, 1991

ROBERT N. WILSON, Clerk

by (signature) _____

Deputy Clerk

REQUEST FOR REHEARING

April, 25, 1994

Office of the Clerk
Clerk of the Court
U.S. Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

RE: USCA-CV-92-55889
USDC-CV-91-1357-K(M)
Crawford v. Goldberg et al.

Dear Clerk:

In Appellant (Crawford's) judgment the following material points of fact or law were overlooked in the Court's decision. Crawford also provides records to prove that Crawford timely filed his claims..

I. Toll Statute

Crawford's Opening Brief page 25 line 25 cites a prior federal court case. Versluis v. Town of Haskell, Okla. 154, F2d 935,936,942 (US10 1941) provides:

"Whenever some paramount authority prevents a person from exercising his legal remedy the time during which he is thus pre-

Exhibit E
Page 63

vented is not to be counted against him in determining whether the statute of limitations has barred his right."

Crawford filed his first federal court case with the Honorable Judge Earl B. Gilliam on June 14, 1989.

On January 8, 1991 Judge Gilliam dismissed Crawford's case without prejudice ordering Crawford to exhaust state remedies and then may refile a new case in District Court.

Crawford complied with Judge Gilliam's order (included in Crawford's letter dated May 3, 1993) and filed a second District Court case on September 30, 1991.

Judge Gilliam was the paramount authority and his order to refile a new case tolled the statute of limitations while Crawford complied with Judge Gilliam's order. This would be in compliance with the above Federal Court case Versluis.

Crawford's Opening Brief page 26 cites

51 Am Jur 2d Limitation of Actions §140. A sentence therein provides:

"An injunction or other legal proceeding which prevents one from exercising his legal remedy against another tolls or suspends the operation of the statute of limitations."

Thus the statute of limitations was tolled while Crawford complied with Judge Gilliam's order.

II. Rehearing 1989

Defendants demoted and dismissed Crawford alleging incompetence.

Crawford was denied due process and equal protection of law at the September 1989 demotion rehearing because the State Personnel Board (SPB) readopted its 1984 decision based on the February 1984 hearing with the full knowledge that the February 1984 hearing was based on 300 pages of altered evidence, 32 pages of removed evidence and 30 new charges.

At the September 1989 rehearing Crawford provided the five member hearing board the original evidence, the altered evidence most of the missing evidence (which included Crawford's workpapers) and answers to the new charges.

For the February 1984 hearing Defendant John Akin removed some of Crawford's workpapers from the evidence and charged that Crawford did not do the work.

For the September 1989 rehearing Crawford also provided that:

1. All of Crawford's audits in the demotion, the dismissal, and for 15 years employment were all supervisor signed approved.

2. The state Field Audit Supervisors' Manual ¶s 0750 and 1420 which provide respectively:

"When the audit supervisor approves the case the supervisor is stating the departmental audit procedures, standards and policy have

been adhered to." "Since the auditor's ability to successfully complete a case requires the supervisor's review and approval, no case can be completed until the audit supervisor signs off on the case." (Crawford's Opening Brief page 31)

The SPB rehearing ignored all of Crawford's evidence in violation of Crawford's due process rights. Nor did any following state tribunal recognize or rule on Crawford's evidence.

On November 27, 1989 Crawford filed an Amended Complaint for the first District Court case No. 89-0883 G (M) which included a violation of due process by the SPB rehearing of September 1989. The rehearing's issues were the same as Crawford's third and fourth causes of action here in District Court. That is falsified evidence, removed evidence and validity of documents with authorized signatures.

Exhibit 1, attached, is the November

27, 1989 Amended Complaint pages 25 and 26 which includes Crawford's claim for violation of due process by the SPB. This is proof that Crawford was timely filed for his third and fourth claims.

The SPB and every tribunal failed to render a judgment on the merits of Crawford's case. Crawford never had a hearing that would pass constitutional muster.

III. Hearing Officer

The Ninth's Memorandum footnotes 3 and 5 provide that Crawford raised his claim for falsifying a hearing officer's report for the first time in a Motion For Reconsideration for the Second District Court for June 1, 1992.

Crawford actually disclosed the falsifying of the Hearing Officer's report in his First District Court case. (Crawford's Opening Brief page 22)

Exhibit 2, attached, is Crawford's first District Court Amended Complaint dated Novem-

ber 27, 1989 page 13 that includes claim for falsifying the Hearing Officer's report.

Exhibit 3, attached, is Crawford's Opposition to Motion to Dismiss Amended Complaint dated April 2, 1990 page 19 that includes claim for removing the Hearing Officer's decision to withdraw the incompetence allegation against Crawford from the Officer's report without the Officer's knowledge plus the Officer's statement.

The Hearing Officer, then retired, talked with Crawford in the fall of 1989. That is when the Officer told Crawford that his decision was to withdraw the incompetence allegation. Crawford then included a claim for falsifying the Hearing Officer's report in Crawford's Amended Complaint dated November 27,1989. (Exhibit 2)

Crawford had no reason to suspect, before the 1989 conversation with the Hearing Officer, that defendant state income tax

officials falsified the Hearing Officer's report.

Exhibits 2 and 3 prove that Crawford timely filed within the statute of limitations period a claim for violation of due process for falsifying a Hearing Officer's report.

IV. Same Defendants

Crawford read page 4 of the Ninth's Memorandum and Gibson v. U.S. 781 F.2d 1334, 1340 (9th Cir. 1986).

Crawford now provides true facts of prior litigation to prove that Crawford qualifies for equitable tolling.

The Ninth's Memorandum page 7 provides that there were different defendents in earlier state tribunals and present proceedings. Actually defendants have been the same persons all along; the real parties in interest.

The State Personnel Board (SPB) is an administrative agency hearing Crawford's

demotion and dismissal cases. Defendant John Akin represented the Franchise Tax Board (FTB), of which defendants are officials, before all of the SPB hearings.

The SPB was named as Defendant in state courts because Crawford was seeking a Writ of Mandate to have the SPB reverse its adverse decisions.

The Defendants these first and second District Court cases were represented in state courts by one state deputy attorney general who reported to John Akin. Thus Mr. Akin and the other defendants timely knew of everything happening in every prior state court.

Defendant John Akin was also counsel appearing and representing the FTB and its Defendant officials at the first District Court case hearings on December 11, 1990 and January 8, 1991. Crawford offered to settle for only beginning employment.

John Akin said no. We could have been out of court and on with life. Judge Gilliam did not know of Crawford's settlement offer. Crawford has no desire for punitive damage.

Defendants are the same persons who falsified the Hearing Officer's report in December 1981.

In a Federal Court Interrogatory dated October 25, 1990 Defendant John Akin admits and declares that he removed evidence, re-numbered evidence and made new charges for the February 1984 hearing. (Excerpts of Record Tab 3 Exhibit 1)

Defendants have been the real parties in interest at every administrative and court hearing since the beginning.

V. Same Issues

Crawford's exhibits show that the same evidence and claims of violations of due process were in state tribunals as in District Court.

## VI. Leave to Amend

Crawford has herein shown that he is timely filed for his claims two, three and four.

Crawford has shown that the Defendants and the issues are the same from the beginning and thus Defendants were informed of every item of litigation from inception.

Therefore Crawford is entitled to equitable tolling.

An amended complaint should succeed. Crawford requests leave to amend his complaint.

## VII. Summary

There was never anything wrong with Crawford's work. Crawford was a competent income tax auditor for 15 years. Defendants should never have brought the false and cruel allegation of incompetence against Crawford.

How to destroy a person: Give him or her something to deny, take his or her reputation, deny him employment, force that

person into court to defend his reputation, exhaust his resources and waste his life.

No state tribunal has ruled on any of Crawford's evidence. Crawford has never had a fair opportunity to litigate his case. Much effort has been expended to keep Crawford from a jury trial.

John Akin was in District Court on January 8, 1991, the day before a jury trial, when Judge Gilliam dismissed Crawford's case, ordered Crawford to try state court of appeal andthen may refile a new case in District Court. Crawford dutifully complied with Judge Gilliam's order. The result has been three more years of writing pleadings and that Crawford has been denied his constitutional right to a jury trial.

Respectfully submitted,

David Crawford

David Crawford

Exhibit E
Page 74

UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

Filed and entered: July 3, 1995

No. 92-55889 CV-91-1357-JNK(HRM)

[redacted]D CRAWFORD

Plaintiff/Appellant

v.

GERALD GOLDBERG, ROBERT BONNICI, JOHN AKIN, JAMES STEVENS, STATE OF CALIDORNIA, ITS AGENCY THE FRANCHISE TAX BOARD,

Defendants/Appellees.

Appeal From the United States District Court for the Southern District of California (San Diego). This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California (San Diego) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

October 25, 1990

JOHN K. VAN DE KAMP, Attorney General
of the State of Californis

KATHLEEN B. Y. LAM (Bar No. 95379)
Deputy Attorney General

110 West A Street, Suite 700
San Diego, CA 921 -3786

Attorneys for Defendants
State of California, Franchise
Tax Board, State Personnel Board

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| DAVID CRAWFORD<br>Plaintiff,<br><br>v.<br><br>STATE OF CALIFORNIA, ITS AGENCIES, THE FRANCHISE TAX BOARD, AND THE STATE PERSONNEL BOARD,<br>Defendants | No. 89-0883-G(M)<br><br>FURTHER ANSWERS TO INTERROGATORIES PROPOUNDED TO STATE OF CALIFORNIA |

RESPONDING PARTY: Defendant, State of California Franchise Tax Board

PROPOUNDING PARTY: Plaintiff, David Crawford

SET NUMBER: One

TO DAVID CRAWFORD, PLAINTIFF IN PROPRIA PERSONA:

Defendant, State of California, Franchise

Tax Board, responds to the interrogatories served on it by plaintiff David Crawford as follows:

2. REQUEST TO INTERROGATORY 15:

Please identify the person(s) and/or administrators, who authorized the demotion and dismissal of Plaintiff (Crawford) for incompetence, despite the fact that all of Plaintiff's audits were supervisor signed approved at all times during the course of Plaintiff's employment with you the Franchise Tax Board.

RESPONSE: Gerald Goldberg, Executive Officer

3. REQUEST TO INTERROGATORY 17:

Please identify the person(s) and/or administrators who authorized the removal of evidence, the renumbering of evidence, and the imposition of new charges for Plaintiff's

//

//

evidentiary hearing of February 27 and 28, 1984.

RESPONSE: John R. Akin

DATED: October 25, 1990

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General

KATHLEEN B.Y. LAM
Deputy Attorney General

Attorneys for Defendants

Exhibit G
Page 78

VERIFICATION

I, John R. Akin, declare that:

I am tax counsel for the Franchise Tax Board. The Franchise Tax Board is one of the defendants in the above entitled matter and I have been authorized to sign this response under oath on its behalf. I have read the foregoing response and know the contents thereof. The foregoing is based on information gathered from various sources with the Franchise Tax Board, and as to such matters, I am informed and belief them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 25, 1990

(signature)
JOHN R. AKIN
Tax Counsel

Franchise Tax Board

Exhibit G
Page 79

DAVID CRAWFORD
520 East Maple St., No. 2
Glendale, CA 91205-2355

Plaintiff/Appellant Pro Se

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

| | |
|---|---|
| DAVID CRAWFORD<br>Plaintiff/Appellant<br><br>v.<br><br>GERALD GOLDBERG ET AL,<br>Defendants/Appellees | No. 92-55889<br><br>MOTION TO RECALL MANDATE AND PETITION FOR REHEARING |

Appellant Crawford received copy of the court's cover letter to District Court San Diego on July 10, 1995. The letter was mailed to Crawford's former address in Sacramento. Crawford had informed the court by mail of every address change.

2. Crawford requests extension of time to file this Motion and Petition because it took so long for Crawford's copy of the letter to reach Crawford.

3. Crawford still has not received

written decision of the court. Crawford learned by telephone his first Request for Rehearing was rejected.

4. In Crawford's judgment the following materialpoints of fact or law were overlooked in the court's decision. Crawford also provides records to prove that Crawford timely filed in San Diego District Court.

5. Crawford limits this petition to only the second cause of action; the alteration of the Hearing Officer's report in 1981.

6. Crawford first learned of the Hearing's Officer's decision to withdraw the incompetence allegation in late 1989. (Quoting the 9th's Memorandum dated April 13, 1994 page 9, footnote 5)

7. For §1983 claims, a cause of action accrues and a statute of limitations begins to run when a party knows or has reason to know of the injury which is the basis for the action. Vaughan v. Grijalva, 927 F.2d

476, 480 (9th Cir. 1991). (Quoting 9th's Memorandum page 4)

8. The 9th's Memorandum page 6 provides:

> "Crawford's claim concerning the Hearing Officer's decision is not subject to equitable tolling because this claim is separate and distinct from the claims he raised in either his administrative or state proceedings."

9. The Hearing Officer, then retired, talked with Crawford in the fall of 1989. That is when Crawford first learned that the Officer's decision paragraph,to withdraw the incompetence allegation against Crawford, was removed from the Officer's report without the Officer's knowledge. (Crawford's Request for Rehearing April 25, 1994 page 3)

10. Crawford had no reason, prior to

late 1989, to suspect that Defendant Franchise Tax Board officials had altered the Hearing Officer's report. (Request April 25, 1994 page 3)

11. Exhibit 1, attached, is Crawford's First District Court Amended Complaint cated November 27, 1989 page 13 that includes Crawford's claim for §1983 violation of due process by altering the Hearing Officer's report. (Request April 25, 1994 page 3)

12. Exhibit 2, attached, is Crawford's Opposition to Motion to Dismiss Amended Complaint dated April 2, 1990 page 19 that includes Crawford's claim for altering the Hearing Officer's replrt plus the Officer's statement. (Request April 25, 1994 page 30

13. Exhibits 1 and 2 prove that Crawford timely filed claim for violation of 14th Amendment due process for altering the Hearing Officer's report. (Request April 25, 1994 page 3)

14. The Hearing Officer's statement in Exhibit 2 is notarized and dated January 25, 1990 which was a few weeks after Crawford first learned Defendants had altered the Hearing Officer's report.

DATED: July 12, 1995

Respectfully submitted

By David Crawford

DAVID CRAWFORD

Exhibit H
Page 84

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| DAVID CRAWFORD,<br>Plaintiff/<br>Appellant<br><br>v.<br><br>GERALD GOLDBERG, ROBERT BONNICI, JOHN AKIN, JAMES STEVENS,<br>Defendants/<br>Appellees. | No. 92-55889<br><br>D.C. No. CV-91-1357-JNK<br><br>Southern California (San Diego)<br><br>ORDER |

Before: POOLE, BEEZER, AND T.G. NELSON,

Circuit Judges.

The petition for rehearing is denied.

August 10, 1995

Exhibit I
Page 85

No.____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1995

David Crawford, Petitioner

v.

State of Californis, Its Agency the Franchise Tax Board (State Income Tax) et al.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

CERTIFICATE OF SERVICE

I, David Crawford, Petitioner in Pro Se, certify that on this twelfth day of September 1995 three copies of the Petition for Writ of Certiorari in the above-entitled case were mailed, first class postage prepaid, to Patricia Hollenbeck, of Higgs, Fletcher and Mack, 2000 First National Bank Building, 401 West "A" Street, San Diego, CA 92101, (619) 236-1551, counsel for all the respondents herein. I further certify that Ms. Hollenbeck is the only party required to be served.

David Crawford
520 E. Maple St., No. 2
Glendale, CA 91205-2355
(818) 241-9745
Petitioner Pro Se